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OCA 87-1861
5 May 1987

MEMORANDUM FOR: C/PB/PPG/OS
C/ALD/OGC
C/POL/OS

FROM:

Legislation Division, OCA

SUBJECT: H.R. 1212 - Banning Private Use of Polygraph:
"Markup" by House Education & Labor Subcommittee

1. On April 30, 1987, the Subcommittee on Employment Opportunities of the House Education and Labor Committee "marked up" H.R. 1212, the "Polygraph Protection Act of 1987", a bill to ban the private use of polygraphs.

2. In its markup, the Subcommittee adopted an amendment offered by Representative Williams to include in the bill a series of governmental exemptions identical to those included in last year's version of this legislation. A copy is attached.

3. This amendment makes H.R. 1212 identical in this regard to last year's version of this legislation. As you will recall, the Agency went on record last year as indicating that this exemption would address its concerns in this area.

4. The bill now proceeds to the full Committee. If it takes any action on the bill, the full Committee is not expected to change the above provision.

5. We will keep you informed of developments regarding this legislation.

Attachment

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OCA/LEG dpt (5 May 87)

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4/28/87

AMENDMENT TO H.R. 1212
OFFERED BY MR. WILLIAMS

Page 6, strike lines 4 and 5 and insert the following:

1 SEC. 6. EXEMPTIONS.

2 (a) NO APPLICATION TO GOVERNMENTAL EMPLOYERS.--The
3 provisions of this Act shall not apply with respect

Page 6, after line 8, insert the following new
subsections:

4 (b) NATIONAL DEFENSE AND SECURITY EXEMPTION.--(1) Nothing
5 in this Act shall be construed to prohibit the
6 administration, in the performance of any counterintelligence
7 function, of any lie detector test to--

8 (A) any expert or consultant under contract to the
9 Department of Defense or any employee of any contractor
10 of such department; or

11 (B) any expert or consultant under contract with the
12 Department of Energy in connection with the atomic energy
13 defense activities of such department or any employee of

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1 any contractor of such department in connection with such
2 activities.

3 (2) Nothing in this Act shall be construed to prohibit
4 the administration, in the performance of any intelligence or
5 counterintelligence function, of any lie detector test to--

6 (A)(i) any individual employed by, or assigned or
7 detailed to, the National Security Agency or the Central
8 Intelligence Agency, (ii) any expert or consultant under
9 contract to the National Security Agency or the Central
10 Intelligence Agency, (iii) any employee of a contractor
11 of the National Security Agency or the Central
12 Intelligence Agency, or (iv) any individual applying for
13 a position in the National Security Agency or the Central
14 Intelligence Agency; or

15 (B) any individual assigned to a space where
16 sensitive cryptologic information is produced, processed,
17 or stored for the National Security Agency or the Central
18 Intelligence Agency.

19 (c) EXEMPTION FOR FBI CONTRACTORS.--Nothing in this Act
20 shall be construed to prohibit the administration, in the
21 performance of any counterintelligence function, of any lie
22 detector test to an employee of a contractor of the Federal
23 Bureau of Investigation of the Department of Justice who is
24 engaged in the performance of any work under the contract
25 with such Bureau.

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AMENDMENT TO H.R. 1212

OFFERED BY MR. WILLIAMS

Page 5, lines 22 and 23, insert ``or prospective employees'' after ``employees'' each place such term appears.

Page 5, line 22, insert ``(or any person acting on behalf of such employee or employees)'' after ``employees''.

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AMENDMENT TO H.R. 1212
OFFERED BY MR. WILLIAMS

Page 5, line 23, insert the following:

- 1 No such civil action may be commenced more than 3 years after
- 2 the date of the alleged violation.

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AMENDMENT TO H.R. 1212

OFFERED BY MR. WILLIAMS

Page 3, line 21, strike ``Upon receipt`` and all that follows through line 24 and insert the following:

1 Each employer shall post and keep posted, in conspicuous
2 places upon its premises where notices to employees and
3 prospective employees are customarily posted, the notice
4 distributed by the Secretary under this section.

Page 4, strike lines 18 through 20 and insert the following:

5 (a) CIVIL PENALTIES.--(1) Subject to paragraph (2)--
6 (A) any employer who violates section 3 may be
7 assessed a civil money penalty not to exceed \$100 for
8 each day of the violation; and
9 (B) any employer who violates any other provision of
10 this Act may be assessed a civil money penalty not to
11 exceed \$10,000.

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AMENDMENT TO H.R. 1212
OFFERED BY MR. WILLIAMS

Page 6, strike lines 11 through 17 and insert the
following:

1 (1) the term ``lie detector test`` includes any
2 examination involving the use of any polygraph,
3 deceptograph, voice stress analyzer, psychological stress
4 evaluator, any written or oral test, or any other device
5 or method (whether mechanical, electrical, or chemical)
6 which is used, or the results of which are used, for the
7 purpose of detecting deception, verifying truthfulness,
8 or rendering a diagnostic opinion regarding the honesty
9 of an individual.

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AMENDMENT TO H.R. 1212

OFFERED BY MR. WILLIAMS

Page 6, line 18, strike ``any person`` and insert ``an agent, independent contractor, employee, or any other person``.